

Alexandra J. Monson (CA Bar No. 324794)
amonson@aldf.org
ANIMAL LEGAL DEFENSE FUND
525 E. Cotati Ave.
Cotati, CA 94931
707.795.2533 ext. 1063 / 707.795.7280 (fax)

Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ANIMAL LEGAL DEFENSE FUND

Plaintiff,

v.

ANIMAL AND PLANT HEALTH INSPECTION
SERVICE

Defendant.

Case No. 3:19-cv-4567

Assigned to:

Referred to:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Freedom of Information Act Case

PRELIMINARY STATEMENT

1. This is an action for declaratory judgment and injunctive relief, challenging the Defendant Animal and Plant Health Inspection Service (APHIS)'s failure to respond to a records request under the Freedom of Information Act (FOIA) related to the Animal Welfare Act (AWA) license of Kimberly A. Lucas *dba* Farmers Inn (Farmers Inn), which houses members of endangered species, as well as many non-endangered animals, in substandard conditions that violate federal and state animal and wildlife protection laws including but not limited to the federal Endangered Species Act, 16 U.S.C. §§ 1531-1544 (ESA).

2. Defendant has violated FOIA by failing to make a determination and otherwise respond to the August 29, **2017** request for nearly two years, far beyond the statutorily prescribed time limit, failing to disclose the requested documents, and unlawfully withholding the requested information.

3. Plaintiff Animal Legal Defense Fund (ALDF) now asks the Court to order Defendant to respond to the request and produce all responsive agency records as required by FOIA.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to FOIA, 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. §§ 2201-02 (declaratory judgment and further relief).

5. Venue is proper in this Court under 5 U.S.C. § 522(a)(4)(B) because Plaintiff ALDF's principal place of business is in the Northern District of California.

6. This Court has authority to award costs and attorneys' fees under 28 U.S.C. § 2412 and 5 U.S.C. § 552(a)(4)(E).

INTRADISTRICT ASSIGNMENT

7. Pursuant to Civil Local Rules 3-5(b), 3-2(c), and 3-2(d), this action is properly assigned to the San Francisco Division of this Court because Plaintiff ALDF resides in and maintains offices in Sonoma County.

PARTIES**PLAINTIFF**

8. Plaintiff ALDF is a national nonprofit organization founded in 1979 and headquartered in Cotati, California. ALDF's mission is to protect the lives and advance the interests of animals through the legal system. ALDF advances this mission by filing lawsuits, providing legal assistance and training to prosecutors in animal cruelty cases, supporting animal protection legislation, and providing resources and opportunities to the legal community to advance the emerging field of animal law. ALDF conducts this work on behalf of itself and more than 235,000 members and supporters throughout the United States, including individuals who live near and closely monitor Farmers Inn.

9. Advocating for effective oversight and regulation of facilities that house and exhibit animals in order to protect captive animals from harm is one of ALDF's central goals. In addition to advocating directly for captive animals whose rights under state and federal laws are being violated, ALDF fights to ensure that the agencies charged with regulating animal exhibitors are transparent when carrying out their statutory duties. Access to information about how and whether APHIS regulates specific animal exhibitors is paramount to ALDF's ability to carry out its mission of protecting captive animals and advancing their interests through the legal system.

DEFENDANT

10. Defendant Animal and Plant Health Inspection Service, a subdivision of the United States Department of Agriculture (USDA), is an agency of the United States government with possession and control over the records Plaintiff seeks. APHIS specifically oversees the Animal Care Program, which is tasked with ensuring the humane treatment of animals covered by the Animal Welfare Act.

STATUTORY AND REGULATORY FRAMEWORK**A. ANIMAL WELFARE ACT**

11. The Animal Welfare Act (AWA) establishes a regulatory framework to promote minimum standards for the humane treatment of animals by four general categories of

commercial animal enterprises: (1) animal dealers, such as brokers who buy and sell animals, and facilities that breed animals for exhibition, sale, or research; (2) exhibitors, such as zoos and circuses; (3) animal research facilities; and (4) carriers and intermediate handlers, such as airlines that do not buy or sell animals but transport them for dealers. *See* 7 U.S.C. § 2132; 9 C.F.R. § 1.1.

12. APHIS is responsible for administering and enforcing the AWA and its implementing regulations on behalf of USDA. *See* 7 U.S.C. §§ 2131 *et seq.*; 9 C.F.R. §§ 1.1 *et seq.*

13. Animal dealers and exhibitors must obtain and maintain a license from USDA to engage in regulated activities. 7 U.S.C. § 2133; 9 C.F.R. §§ 2.1, *et seq.*

14. In addition to complying with licensing and registration requirements, regulated entities must comply with other requirements such as providing minimum standards of care for animals and maintaining certain types of records. *See* 9 C.F.R. §§ 2.1 *et seq.*; 9 C.F.R. §§ 3.1, *et seq.* These standards of care include the provision of adequate shelter, nutrition, sanitization, exercise, and veterinary care. 9 C.F.R. §§ 3.1, *et seq.*

B. FREEDOM OF INFORMATION ACT

15. FOIA promotes open government by providing every person with a right to request and receive federal agency records. 5 U.S.C. § 552(a)(3)(A), (f).

16. In furtherance of its purpose to encourage open government, FOIA imposes strict deadlines on agencies to provide responsive documents to FOIA requests. An agency must respond to a FOIA request by issuing a “determination” within twenty days after receipt of the request. 5 U.S.C. § 552(a)(6)(A)(i).

17. The determination “must at least inform the requester of the scope of the documents that the agency will produce, as well as the scope of the documents that the agency plans to withhold under any FOIA exemptions.” *Citizens for Responsibility & Ethics in Wash. v. FEC*, 711 F.3d 180, 186 (D.C. Cir. 2013).

18. The agency must immediately notify the requester of the determination and the reasons for it, and of the right of such person to appeal an adverse determination. The

1 responding agency has twenty days to make a determination with respect to any appeal. 5
 2 U.S.C. § 552(a)(6)(A)(ii).

3 19. FOIA explicitly requires agencies to provide information about the status of a
 4 request, specifically including “an estimated response date on which the agency will complete
 5 action on the request.” 5 U.S.C. § 552(a)(7)(B)(ii).

6 20. An agency’s failure to comply with any timing requirements is deemed
 7 constructive denial and satisfies the requester’s requirement to exhaust administrative
 8 remedies. 5 U.S.C. § 552(a)(6)(C)(i).

9 21. A FOIA requester who exhausts administrative remedies may petition the court
 10 for injunctive and declaratory relief from the agency’s continued withholding of public records.
 11 5 U.S.C. § 552(a)(4)(B).

12 **FACTS GIVING RISE TO PLAINTIFFS’ CLAIMS FOR RELIEF**

13 **A. FARMERS INN**

14 22. Farmers Inn, a so-called “wildlife zoo” and “petting zoo” located in Sigel,
 15 Pennsylvania, confines and exhibits many species of wildlife, including endangered species,
 16 which it displays to the public for a fee.

17 23. On information and belief, the Farmers Inn houses a ring-tailed lemur, a black
 18 leopard, a gray wolf, two black bears, and over 35 other species.

19 24. Farmers Inn currently holds an exhibitor’s license under the AWA.

20 25. The animals kept at Farmers Inn are housed in cramped and filthy enclosures that
 21 provide inadequate shelter from the elements, lack fresh water and suitable food, and force
 22 many of the animals held captive inside to live in complete or near-complete social isolation
 23 (and under other unsuitable conditions). Additionally, Farmers Inn operates an inappropriate
 24 and unsupervised customer feeding program that permits and encourages visitors to feed the
 25 captive animals “animal crackers” and other types of processed foods not suitable for animals.

26 **B. THE FOIA REQUEST**

27 26. On August 29, 2017, ALDF submitted a FOIA request to APHIS requesting “all
 28 records pertaining to licensee Kimberly A. Lucas *dba* Farmers Inn in Sigel, Pennsylvania

1 (“Farmers Inn”), including records of any inspections, investigations, veterinary reports, or
2 enforcement actions” and “any correspondence between USDA APHIS and Farmers Inn,
3 including but not limited to: letters, emails, phone calls, or facsimiles.”

4 27. APHIS provided an acknowledgement letter on August 30, 2017, assigning the
5 request tracking no. 2017-APHIS-06379-F and providing the contact information for the FOIA
6 officer assigned to the request. The letter stated the “target response date” was September 27,
7 2017.

8 28. Indeed, FOIA required APHIS to respond to the request by September 27, 2017.

9 29. On February 23, 2018, ALDF emailed APHIS to request a status update.

10 30. The assigned FOIA Officer responded on February 27, 2018, stating, “At this
11 time we are waiting for the program to provide us the requested records for review and
12 processing.”

13 31. When ALDF followed-up on the same date to request an estimated response
14 date, the Officer did not respond.

15 32. ALDF again contacted the FOIA Officer on March 19, 2019, stating “We still
16 have not received any response to FOIA 2017-06379-F. That request was submitted on August
17 28, 2017. It has been over a year and a half since that request was submitted, which we view as
18 a constructive denial. We request that you provide a complete response by April 2, 2019.
19 Otherwise, we intend to act in response to this constructive denial.”

20 33. Once again, APHIS did not respond to ALDF’s email.

21 34. To date, APHIS has not made a determination, provided any documents, or
22 responded in any way to ALDF’s request for documents—nor has APHIS, at a minimum,
23 provided an estimated response date to ALDF’s request.

24 **PLAINTIFF’S CLAIMS FOR RELIEF**

25 **CLAIM ONE: VIOLATIONS OF THE FREEDOM OF INFORMATION ACT**

26 35. Plaintiff re-alleges and incorporates by reference the allegations set forth in
27 paragraphs 1-34 in the complaint as if fully set forth herein.

1 36. ALDF made a proper FOIA request for information relating to Farmers Inn. 5
2 U.S.C. § 552(a)(3)(A).

3 37. APHIS has unlawfully withheld the requested information from ALDF by failing to
4 provide it within statutory deadlines, which violates FOIA. 5 U.S.C. § 552(a)(6)(A).

5 38. APHIS has also failed to provide an estimated date by which it will release
6 responsive records, which violates FOIA. 5 U.S.C. § 552(7).

7 39. APHIS has constructively denied ALDF's request for information by failing to
8 respond within the statutory deadline, and ALDF has exhausted its administrative remedies. 5
9 U.S.C. § 552(a)(6)(C)(i).

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff respectfully requests that this Court:

- 12 1. Order APHIS to expeditiously produce all records requested by Plaintiff;
13 2. Declare unlawful APHIS's failure to respond to Plaintiff's FOIA request;
14 3. Declare unlawful APHIS's failure to produce records that Plaintiff has requested;
15 4. Declare unlawful APHIS's failure to provide any estimated response or decision
16 dates;
17 5. Exercise close supervision over APHIS as it processes Plaintiff's request;
18 6. Award to Plaintiff all costs and reasonable attorneys' fees as provided in 5 U.S.C.
19 § 552(a)(4)(E) or any other law; and
20 7. Grant other and further relief as the Court may deem just and proper.

1 Dated: August 6, 2019

Respectfully submitted,

3 /s/ Alexandra J. Monson

Alexandra J. Monson (CA Bar No. 324794)

ANIMAL LEGAL DEFENSE FUND

525 E. Cotati Ave.

Cotati, CA 94931

Telephone: 707.795.2533 ext. 1063

Facsimile: 707.795.7280

Email: amonson@aldf.org

9 *Attorney for Plaintiff*